



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0388]

RIN 1625-AA00

Safety Zones within the Captain of the Port New Orleans Zone, New Orleans to Baton Rouge, LA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for multiple locations and dates within the Captain of the Port New Orleans (COTP Zone). These safety zones are necessary to provide for the safety of life and protection of vessels from potential hazards associated with fireworks displays on navigable waterways. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through July 14, 2017. For the purposes of enforcement, actual notice will be used from 8:00 p.m. through 10:00 p.m. each day from July 1, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the

docket, go to <http://www.regulations.gov>, type USCG-2017-0388 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2281, email Howard.K.Vacco@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port New Orleans
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is establishing four temporary safety zones within the COTP New Orleans Zone (COTP Zone) for the following planned fireworks displays.

1. Mandeville City 4th of July Celebration Fireworks are scheduled from 8:45 p.m. through 9:45 p.m. on July 1, 2017. The fireworks barge will be positioned on Lake Pontchartrain, in vicinity of 30°21'12.0"N and 090°04'28.9"W.
2. L'Auberge Casino 4th of July Celebration Fireworks are scheduled from 8:45 p.m. through 9:45 p.m. on July 2, 2017. The fireworks barge will be positioned in the Lower Mississippi River at Mile Marker 217.0 above Head of Passes.
3. St. John the Baptist Parish 4th of July Celebration Fireworks are scheduled from 8:00 p.m. through 9:00 p.m. on July 3, 2017. The fireworks barge will be positioned in the

Lower Mississippi River at Mile Marker 138.0 above Head of Passes.

4. BBC Beach Body special event fireworks are scheduled from 10:30 p.m. through 11:15 p.m. on July 14, 2017. The fireworks barge will be positioned in the Lower Mississippi River at Mile Marker 96.2 above Head of Passes.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable and against public interest. We must establish this safety zone by July 1, 2017 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of these safety zones until after the scheduled dates of the fireworks displays and jeopardize public safety.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because the rule would not be effective until after the scheduled displays occur.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port New Orleans (COPT) has determined that these safety zones are

necessary to provide for the safety of life and to protect property due to the potential hazards associated with barge-based fireworks displays taking place on these navigable waterways. The Coast Guard will notify the public and maritime community of the proposed safety zones and their respective enforcement periods via Broadcast Notice to Mariners (BNM).

IV. Discussion of the Rule

This rule establishes four temporary safety zones within the COTP Zone on several dates and in different locations. Each safety zone will be enforced on the respective dates listed above and in the regulatory text provided at the end of this document. Each safety zone is limited to a duration of one hour, and will occur during the evening on the dates of July 1, July 2, July 3, and July 14, 2017. Entry into these safety zones is prohibited unless permission has been granted by the COTP or a designated representative.

The COTP will inform the public through Broadcast Notice to Mariners (BNM) of the enforcement period for each safety zone as well as any changes in the planned schedule. Inquiries may be made with the Coast Guard Sector New Orleans Command Center regarding the status of the safety zone by telephone at 504-365-2200.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Three of the safety zones will be no greater than 1 mile in length and will restrict navigation on the Lower Mississippi River for no longer than one hour each. The remaining safety zones will be established on Lake Pontchartrain, extending a 600 foot radius from position 30°21’12.0”N and 090°04’28.9”W and will restrict navigation for no longer than one hour. Due to the limited scope and short duration of each safety zone, the impact on routine navigation is expected to be minimal. Additionally, notice of the safety zones or any changes in the planned schedule will be made via Broadcast Notice to Mariners. Entry into the safety zones may be requested from the COTP or a designated representative and will be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-

4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves four temporary safety zones within the COTP Zone on four separate days. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.1D. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0388 to read as follows:

§ 165.T08-0388 Safety Zones; Safety Zones within Captain of the Port New

Orleans Zone, New Orleans to Baton Rouge, LA.

(a) Safety Zones. The following areas are safety zones:

(1) Mandeville City 4th of July Celebration, Mandeville, LA.

(i) Location. All navigable waters of Lake Pontchartrain extending in a 600 foot radius from position 30°21'12.0"N and 090°04'28.9"W, Mandeville, LA.

(ii) Effective period. This section will be effective from 8:45 p.m. through 9:45 p.m. on July 1, 2017.

(2) L'Auberge Casino Independence Day fireworks display, Baton Rouge, LA.

(i) Location. All navigable waters of the Lower Mississippi River from mile marker 216.5 to mile marker 217.5 above Head of Passes, Baton Rouge, LA.

(ii) Effective period. This section will be effective from 8:45 p.m. through 9:45 p.m. on July 2, 2017.

(3) St. John the Baptist Parish Independence Day fireworks display, LaPlace, LA.

(i) Location. All navigable waters of the Lower Mississippi River from mile marker 137.5 to mile marker 138.5 above Head of Passes, LaPlace, LA.

(ii) Effective period. This section will be effective from 8:00 p.m. through 9:00 p.m. on July 3, 2017.

(4) Team Beachbody Coach Summit fireworks display, New Orleans, LA.

(i) Location. All waters of the Lower Mississippi River from mile marker 95.7 to mile marker 96.7 above Head of Passes, New Orleans, LA.

(ii) Effective period. This section will be effective from 10:30 p.m. through 11:15 p.m. on July 14, 2017.

(b) Definitions. As used in this section, a designated representative means a

commissioned officer, warrant officer, or petty officer of the U.S. Coast Guard assigned under the operational control of USCG Sector New Orleans.

(c) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is prohibited unless specifically authorized by the Captain of the Port New Orleans (COTP) or a designated representative. For each event, the COTP designated representative will be announced via Marine Safety Information Bulletin and Notice to Mariners.

(2) Vessels seeking entry into these safety zones must request permission from the COTP or a designated representative. They may be contacted via the U.S. Coast Guard Sector New Orleans Command Center, via VHF-FM Channel 16 or by telephone at 504-365-2200.

(3) Persons and vessels permitted to enter these safety zones must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or designated representative.

(d) Information broadcasts. The COTP or a designated representative will inform the public through Broadcast Notice to Mariners of any changes to the enforcement periods for the safety zones.

Dated: June 28, 2017

W. R. ARGUIN,
CAPTAIN, U.S. Coast Guard,

Captain of the Port New Orleans.

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